

Federal Energy Regulatory Commission

§ 2.103

in process as would otherwise be destroyed, but shall not include deliveries required to maintain plant production. For the purposes of this definition propane and other gaseous fuels shall not be considered alternate fuels.

(7) *Feedstock gas*. Is defined as natural gas used as raw material for its chemical properties in creating an end product.

(8) *Process gas*. Is defined as gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics. For the purposes of this definition propane and other gaseous fuels shall not be considered alternate fuels.

(9) *Boiler fuel*. Is considered to be natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

(10) *Alternate fuel capabilities*. Is defined as a situation where an alternate fuel could have been utilized whether or not the facilities for such use have actually been installed; *Provided, however*, Where the use of natural gas is for plant protection, feedstock, or process uses and the only alternate fuel is propane or other gaseous fuel then the consumer will be treated as if he had no alternate fuel capability.

(Sec. 4, 52 Stat. 822, 76 Stat. 72 (15 U.S.C. 717c); Sec. 5, 52 Stat. 823 (15 U.S.C. 717d); Sec. 7, 52 Stat. 824, 825, 56 Stat. 83, 84, 61 Stat. 459 (15 U.S.C. 717f); Sec. 10, 52 Stat. 826 (15 U.S.C. 717i); Sec. 14, 52 Stat. 820 (15 U.S.C. 717m); Sec. 15, 52 Stat. 829 (15 U.S.C. 717n); Sec. 16, 52 Stat. 930 (15 U.S.C. 717o); Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[Order 467A, 38 FR 2171, Jan. 22, 1973, as amended by Order 467B, 38 FR 6386, Mar. 9, 1973; Order 493-A, 38 FR 30433, Nov. 5, 1973; Order 467-C, 39 FR 12984, Apr. 10, 1974; Order 225, 47 FR 19055, May 3, 1982]

STATEMENT OF GENERAL POLICY TO IMPLEMENT PROCEDURES FOR COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

AUTHORITY: Sections 2.80-2.82 issued under secs. 4, 10, 15, 307, 309, 311 and 312 (41 Stat. 1065, 1066, 1068, 1070; 46 Stat. 798, 49 Stat. 839, 840, 841, 942, 843, 844, 856, 857, 858, 859, 860, Stat. 501, 82 Stat. 617; 16 U.S.C. 797, 803, 808, 825f, 825h, 825j, 825k), and the Natural Gas Act, particularly secs. 7 and 16 (52 Stat. 824, 825, 830, 56 Stat. 83, 84; 61 Stat. 459; 15 U.S.C.

717f, 717o), and the National Environmental Policy Act of 1969, Pub. L. 91-190, approved January 1, 1970, particularly secs. 102 and 103 (83 Stat. 853, 854), unless otherwise noted.

§ 2.80 Detailed environmental statement.

(a) It will be the general policy of the Federal Energy Regulatory Commission to adopt and to adhere to the objectives and aims of the National Environmental Policy Act of 1969 (NEPA) in its regulations promulgated for statutes under the jurisdiction of the Commission, including the Federal Power Act, the Natural Gas Act and the Natural Gas Policy Act. The National Environmental Policy Act of 1969 requires, among other things, all Federal agencies to include a detailed environmental statement in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Therefore, in compliance with the National Environmental Policy Act of 1969, the Commission staff will make a detailed environmental statement when the regulatory action taken by the Commission under the statutes under the jurisdiction of the Commission will have a significant environmental impact. The specific regulations implementing NEPA are contained in part 380 of the Commission's regulations.

[Order 486, 52 FR 47910, Dec. 17, 1987]

STATEMENT OF GENERAL POLICY TO IMPLEMENT THE ECONOMIC STABILIZATION ACT OF 1970, AS AMENDED, AND EXECUTIVE ORDERS 11615 AND 11627

AUTHORITY: Sections 2.90 through 2.102 issued under 84 Stat. 799, as amended, 85 Stat. 38, unless otherwise noted.

§§ 2.100-2.102 [Reserved]

§ 2.103 Statement of policy respecting take or pay provisions in gas purchase contracts.

(a) Recognizing that take or pay contract obligations may be shielding the prices of deregulated and other higher cost gas from market constraints, the Commission sets forth its general policy regarding prepayments for natural gas pursuant to take or pay provisions

in gas contracts and amendments thereto between producers and interstate pipelines which become effective December 23, 1982. The provisions of this policy statement do not establish a binding norm but instead provide general guidance. In particular cases, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration.

(b) With respect to gas purchase contracts entered into on or after December 23, 1982, the Commission intends to apply a rebuttable presumption in general rate cases that prepayments to producers will not be given rate base treatment if the prepayments are made pursuant to take or pay requirements in such gas purchase contracts or amendments which exceed 75 percent of annual deliverability.

(Natural Gas Act, 15 U.S.C. 717-717w; Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. 3301-3432)

[47 FR 57269, Dec. 23, 1982]

§ 2.104 Mechanisms for passthrough of pipeline take-or-pay buyout and buydown costs.

(a) *General Policy.* The Commission as a matter of policy will provide two distinct mechanisms for passthrough of take-or-pay buyout and buydown costs of interstate natural gas pipelines. The first is pursuant to existing Commission policy and practice. Under this method, pipelines may pass through prudently incurred take-or-pay buyout and buydown costs in their sales commodity rates. The second method is available to pipelines which agree to an equitable sharing of take-or-pay costs and which transport under part 284 of this chapter. Qualifying pipelines may utilize the alternative passthrough mechanisms described in this section. Where a pipeline agrees to absorb from 25 to 50 percent of take-or-pay buyout and buydown costs, the Commission will permit the pipeline to recover through a fixed charge an amount equal to (but not greater than) the amount absorbed. Any remaining costs up to 50 percent of total buyout and buydown costs may be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput.

(b) *Cost allocation procedures.* A pipeline's volume-based surcharges must be based on the volumes which underlie its most recent Commission-approved rates. Fixed charges must be based on each customer's cumulative deficiency in purchases in recent years (during which the current take-or-pay liabilities of the pipelines were incurred) measured in relation to that customer's purchases during a representative period during which take-or-pay liabilities were not incurred. The allocation formula employed must incorporate the following guidelines:

(1) A representative base period must be selected. The base period must reflect a representative level of purchases by the pipeline's firm customers during a period preceding the onset of changed conditions which resulted in reduced purchases and growth of the take-or-pay problem.

(2) Firm purchases by each customer during the base year under firm rate schedules or contracts for firm service must be determined.

(3) Firm sales purchase deficiency volumes for each subsequent year must be determined.

(4) A fixed charge based on each customer's cumulative deficiencies as compared to total cumulative deficiencies must be derived. The filing pipeline will be free to select for rate calculation and filing purposes a reasonable amortization period for buyout and buydown costs being recovered through fixed charges or volumetric surcharges. The pipeline will be entitled to interest at the rate set forth in part 154 of this chapter on unamortized amounts.

(c) *Implementing procedures.* (1) Pipelines acting pursuant to this section may submit on or before December 31, 1990, a non-PGA rate filing under section 4(e) of the Natural Gas Act. Pipelines may include in their filings a fixed charge and a volumetric surcharge to recover buyout and buydown costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months. Detailed support for the amounts claimed and for the calculation of customer surcharges must be provided. In addition, the pipeline must disclose and describe all consideration,